



Mechanism for International Criminal Tribunals

Case No: MICT-12-20

Date: 18 November 2014

Original: English

**Before:** Judge Theodor Meron, President

**Registrar:** Mr. John Hocking

**PROSECUTOR**

v.

**BERNARD MUNYAGISHARI**

**PUBLIC**

**MONITORING REPORT FOR OCTOBER 2014**

**Monitors:**

Ms. Jelena Gudurić

Prof. Zbigniew Lasocik

Ms. Xheni Shehu

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## I. INTRODUCTION

1. This monitoring report pertains to the activities in the *Munyagishari* case before the Rwandan judiciary and the interactions of the monitors appointed by the Mechanism for International Criminal Tribunals (“Mechanism”) with various stakeholders during the month of October 2014 (“Reporting Period”).
2. During the Reporting Period, the appointed monitors – Ms. Jelena Gudurić, Prof. Zbigniew Lasocik and Ms. Xheni Shehu (individually “Monitor”, collectively “Monitors”) each made one visit to Rwanda.<sup>1</sup>
3. No court hearings were held in this period. The next hearing will be held on 5 November 2014.
4. During the Reporting Period, the Monitors (with the assistance of the interpreter) met with Mr. Munyagishari, and his Lead Counsel.
5. A detailed report on all activities during the Reporting Period is provided below.

## II. DETAILED REPORT

### A. Monitoring Mission from 14 to 16 October 2014

#### Meeting with Mr. Munyagishari on 15 October 2014

6. The meeting was held at the Special Enclosure of the Kigali Central Prison (“Special Enclosure” and “Prison”, respectively) wherein Mr. Munyagishari is detained. Mr. Munyagishari handed over a document to the Monitor, which summarised all issues he intended to raise at the meeting.<sup>2</sup>
7. Mr. Munyagishari raised a number of issues concerning his conditions of detention.<sup>3</sup> He attributed the majority of the issues to the recent changes in the Prison Management.
8. Mr. Munyagishari indicated that with the former Prison Director, Mr. Alex Murenzi, there were some improvements in the conditions of detention. The prisoners appreciated him for his efforts in that regard. Mr. Munyagishari referenced the January-February Report,<sup>4</sup> and noted that the former Prison Director had taken the initiative to go to Arusha to familiarise himself with conditions at the Detention Facility of the International Criminal Tribunal for Rwanda (“ICTR”). However, according to Mr. Munyagishari, the situation at the Special Enclosure deteriorated after Mr. Murenzi’s departure. He provided specific examples to illustrate the changes.

<sup>1</sup> Ms. Shehu’s mission to Rwanda was from 1 to 3 October 2014 (this mission focused on court hearings in the *Uwinkindi* case); Ms. Gudurić’s from 14 to 16 October 2014; Prof. Lasocik’s from 21 to 23 October 2014. Each of the latter two Monitors prepared the part of this report corresponding to their respective mission.

<sup>2</sup> The original document, dated 15 October 2014, is kept in the case correspondence file. Paragraphs 6 to 18 *infra* include information conveyed both during the meeting and in the letter.

<sup>3</sup> On 15 October 2014, prior to the meeting, the Monitor had received a letter from Mr. Munyagishari of the same date requesting the Monitor to urgently visit the Special Enclosure of the Prison to witness conditions of detention.

<sup>4</sup> See *Prosecutor v. Bernard Munyagishari*, Case No. MICT-12-25, Monitoring Report for the *Munyagishari* Case (January and February 2014), public, dated 7 March 2014, para. 46.

9. Mr. Munyagishari indicated that since 2011 another detainee has been designated to provide assistance with cleaning of the dining room, cells and the remainder of the Special Enclosure, as well as washing clothes and dishes. However, in the last two weeks, this practice has been discontinued. As a result, the detainees of the Special Enclosure now have to clean the premises and do other chores themselves, including the preparation of their breakfast.
10. Further, in Mr. Munyagishari's view, during Mr. Murenzi's tenure, visits were well organised. In contrast, the detainees now face difficulties. Legal visits are no longer held in an office that allows privacy. Instead, they are held in the newly built facility, which does not allow for confidential conversation.
11. The Monitor notes that the new facility is a roofed, but open, gazebo-type structure with no fitted doors and windows, located right outside the Special Enclosure in a communal area within the Prison compound. It provides neither sound insulation nor visual cover from passers-by *i.e.* other prisoners, guards and visitors.
12. Mr. Munyagishari also reported that his family members are now interviewed by the prison administration upon arrival to the Prison. On one occasion, they were interviewed and had to return without seeing Mr. Munyagishari. He explained that visitors are generally only required to complete a form upon arrival, but his visitors are additionally subjected to questioning.
13. Mr. Munyagishari expressed concern that he is no longer able to have fruit despite the medical doctor's recommendation for its daily intake. In line with this recommendation, his son was permitted to import fruit to the Prison but this was recently denied. Mr. Munyagishari raised this issue with the new Prison Director who advised him to buy fruit from the Prison shop instead. In response, Mr. Munyagishari informed the Prison Director that the shop often does not have fruit, and on this basis he asked for an exceptional permission for his son to bring him fruit. Mr. Munyagishari believes that the detainees should be allowed to have fruit brought from the outside whenever the shop does not have it. The Director denied this request but undertook to speak with the appropriate service to ensure that the shop has fruit on offer. While this discussion is ongoing, Mr. Munyagishari is deprived of fruit, which reportedly affects his health.
14. Mr. Munyagishari also raised concerns about his medical care. With reference to the January-February Report,<sup>5</sup> Mr. Munyagishari noted that the medical doctor was supposed to visit the detainees twice a week. The doctor, however, has not visited them since June 2014. The detainees made a complaint about the doctor's absence to the nurses, whom they regularly meet, but the matter has not been positively resolved.
15. Mr. Munyagishari, again by reference to the January-February Report,<sup>6</sup> also observed a change in connection with religious services. While the detainees were previously allowed to talk amongst each other, this is no longer the case. Currently, if Mr. Munyagishari wishes to speak with another detainee, a guard needs to be present.

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<sup>5</sup> *Id.*, para. 39.

<sup>6</sup> *Id.*, para. 43.

16. Another concern regarding conditions of detention that Mr. Munyagishari reported is that there has been no lighting in the bathroom since July 2014.
17. In September 2014, the Spokesperson of the Prosecutor's Office visited the detainees of the Special Enclosure and stated, according to Mr. Munyagishari, that the commitments the Rwandan Government made before the Mechanism are no longer valid. In Mr. Munyagishari's view, this is an alarming statement.
18. At their meeting on 6 October 2014, Mr. Munyagishari informed the new Prison Director of his right to report all matters that, in Mr. Munyagishari's view, affect his conditions of detention to the Monitor.

Correspondence from Mr. Munyagishari of 16 October 2014

19. On 16 October 2014, the Monitor received a letter from Mr. Munyagishari of the same date.
20. In the letter, Mr. Munyagishari underscored the need for the new Prison Director to comply with the commitment of the Rwandan Government given on 13 January 2012 in "Case no. ICTR-2005-89-I" that "the current detention rules in effect for prisoners convicted by the United Nations Special Court for Sierra Leone will also apply to all accused and prisoners in those cases referred by the Tribunal" (emphasis omitted).<sup>7</sup>
21. Mr. Munyagishari asked that this matter be added to the report which should be filed confidentially. The Monitor subsequently met Mr. Munyagishari to clarify the status of the information he had provided.<sup>8</sup> He confirmed that the matters he had raised at the meeting of 15 October 2014 and in his letter of 16 October 2014 can be reported publicly.

***B. Monitoring Mission from 21 to 23 October 2014***

Meeting with Mr. Munyagishari's Lead Counsel on 22 October 2014

22. During the Monitor's brief meeting with Mr. Niyibizi, Mr. Munyagishari's Lead Counsel, he handed over to the Monitor a document which includes his comments on the contract that the Government proposed concerning the remuneration of the Defence team. Mr. Niyibizi indicated that that he had submitted the document to the Head of local Bar Association, and asked that a copy of the document be transmitted to the President of the Mechanism.
23. The Monitor transmitted the copy to the President of the Mechanism through the Mechanism's office in Kigali.

Meeting with Mr. Munyagishari on 22 October 2014

24. In Mr. Munyagishari's view, his Defence team will not be able to prepare its written response to the Indictment. This is because his Counsel have not been remunerated for

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<sup>7</sup> See *Prosecutor v. Bernard Munyagishari*, Case No. ICTR-05-89-I, Brief for the Republic of Rwanda as *Amicus Curiae*, public, dated 13 January 2013, para. 23.

<sup>8</sup> On 12 November 2014.

their work, and no funds have been made available for them to undertake an investigation.

25. Mr. Munyagishari also stated that, due to his lack of legal knowledge, his position is not equal to that of the Government, which is represented by professional Prosecutors. Additionally, Mr. Munyagishari claimed that the Prosecution had ample time to prepare its case whereas he was given only four months.

26. [REDACTED]

27. Mr. Munyagishari concluded that his conditions of his detention deteriorated after the representative of the Office of the Prosecutor stated that Rwanda is no longer bound by the commitments it had previously given, during his visit to the Prison in September 2014.

28. Mr. Munyagishari also claimed that the Prison administration is isolating the detainees of the Special Enclosure. As an example, he explained that they are not allowed to greet other prisoners at religious services, and are prevented from participating in sporting activities with other prisoners.

29. [REDACTED]

Meeting with Mr. Munyagishari on 23 October 2014

30. Mr. Munyagishari explained that he wrote a letter to his lawyer Mr. Niyibizi setting out the level of their cooperation and Counsel's involvement in the Defence case.<sup>9</sup>

31. Mr. Munyagishari confirmed that his lawyers have not signed a contract for their legal services. He expected that the same contract as in the *Uwinkindi* case would have been signed. He added that a much more comprehensive contract for legal services was signed in the *Uwinkindi* case to lead the ICTR and the Mechanism to conclude that the Rwandan Government would follow the highest fair trial standards.

### III. CONCLUSION

32. The Monitors remain available to provide any additional information, at the President's direction.

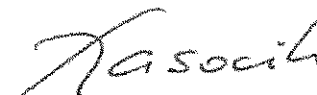
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<sup>9</sup> He handed a copy of this letter to the Monitor, which is kept in the case correspondence file.

Respectfully submitted,



Jelena Gudurić  
Monitor for the *Munyagishari* case  
The Hague, the Netherlands



Prof. Zbigniew Lasocik  
Monitor for the *Munyagishari* case  
Warsaw, Poland

Dated this 18<sup>th</sup> day of November 2014

Case No. MICT-12-25

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18 November 2014



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